

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Tito Knox,)	
)	C.A. No. 6:17-2665-HMH-PJG
Plaintiff,)	
)	
vs.)	OPINION & ORDER
)	
David Plowden, Public Defender,)	
)	
Defendant.)	

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit. This court, after affording Tito Knox (“Knox”) an opportunity to amend his complaint pursuant to Goode v. Cent. Va. Legal Aid Soc’y, Inc., 807 F.3d 619, 630 (4th Cir. 2015), adopted the recommendation of the magistrate judge and dismissed this case without prejudice for failure to state a claim on February 5, 2018. Knox appealed and the Fourth Circuit dismissed the appeal as interlocutory and remanded the case. Knox v. Plowden, No. 18-1166, 2018 WL 2446689, at *1 (4th Cir. May 31, 2018) (unpublished). On remand, the Fourth Circuit directed that “the district court, in its discretion, either afford Knox another opportunity to file an amended complaint or dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order.” Id.

After review, the court denies Knox another opportunity to amend the complaint. In his amended complaint, Knox fails to state any claim for relief and offers only conclusory facts. Further, the only named defendant in this case was a federal public defender during all times relevant to this action, and federal public defenders generally cannot be sued pursuant to 42

U.S.C. § 1983 or Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Hall v. Quillen, 631 F.2d 1154, 1155 (4th Cir. 1980) (finding no state action under § 1983 even where the plaintiff's attorney was a public defender); Campbell v. North Carolina, No. 1:12-CV-719, 2013 WL 2153110, at *2 n.1 (M.D.N.C. May 16, 2013) (collecting cases finding that federal public defenders are not amenable to suit pursuant to Bivens). Moreover, this case appears to be barred by Heck v. Humphrey, 512 U.S. 477 (1994), as claims for damages associated with a valid conviction are barred by Heck. For all these reasons, the court denies Knox the opportunity to amend his complaint for the second time.

It is therefore

ORDERED that the case is dismissed with prejudice.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
June 4, 2018

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.